



New South Wales

# Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* with respect to the setting of standard non-parole periods for offences.

The amendments made by the Bill clarify the following aspects of the role of the standard non-parole period in sentencing, as a consequence of the High Court decision in *Muldrock v The Queen* [2011] HCA 39:

- (a) a standard non-parole period represents the non-parole period not for the actual offence for which an offender is to be sentenced but for an offence of the same kind that is in the middle of the range of seriousness taking into account only objective factors that affect its relative seriousness,
- (b) the standard non-parole period for an offence is to be taken into account in determining the appropriate sentence for an offender,
- (c) in taking a standard non-parole period into account, a court is not required to make an assessment of the extent to which the seriousness of the offence for which the non-parole period is set differs from that of an offence to which the standard non-parole period is referable.

The Bill implements recommendations of the NSW Law Reform Commission in its *Interim report on standard minimum non-parole periods* of May 2012.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Crimes (Sentencing Procedure) Act 1999 No 92**

**Schedule 1 [2]** makes it clear that a standard non-parole period represents the non-parole period not for the actual offence for which an offender is to be sentenced but for an offence of the same kind that is in the middle of the range of seriousness, and that this is determined by taking into account only objective factors that affect its relative seriousness (and without reference to matters personal to a particular offender or class of offenders).

**Schedule 1 [3]** makes it clear that a standard non-parole period is a matter to be taken into account in determining the appropriate sentence for an offender (as a “legislative guidepost”). The amendment does not affect a court’s usual sentencing practice of assessing the relative seriousness of an offence taking into account objective and subjective factors and does not limit the other matters that a court is required or permitted to take into account in determining the appropriate sentence for an offender. **Schedule 1 [1]** makes a consequential amendment.

**Schedule 1 [4]** provides that an amendment made by the proposed Act extends to an offence committed before the commencement of the amendment but does not affect any sentence imposed before that commencement.



New South Wales

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New South Wales

# Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Bill 2013

No. , 2013

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## **A Bill for**

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to make further provision for standard non-parole periods for certain offences.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013</i> .	3
	4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

<b>Schedule 1</b>	<b>Amendment of Crimes (Sentencing Procedure)</b>	1
	<b>Act 1999 No 92</b>	2
<b>[1]</b>	<b>Section 44 Court to set non-parole period</b>	3
	Omit “section 54B (4A)” from section 44 (2C). Insert instead “section 54B”.	4
<b>[2]</b>	<b>Section 54A What is the standard non-parole period?</b>	5
	Omit section 54A (2). Insert instead:	6
	(2) For the purposes of sentencing an offender, the standard non-parole period represents the non-parole period for an offence in the Table to this Division that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness.	7 8 9 10
<b>[3]</b>	<b>Section 54B</b>	11
	Omit the section. Insert instead:	12
<b>54B</b>	<b>Consideration of standard non-parole period in sentencing</b>	13
	(1) This section applies when a court imposes a sentence of imprisonment for an offence, or an aggregate sentence of imprisonment with respect to one or more offences, set out in the Table to this Division.	14 15 16
	(2) The standard non-parole period for an offence is a matter to be taken into account by a court in determining the appropriate sentence for an offender, without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence for an offender.	17 18 19 20
	(3) The court must make a record of its reasons for setting a non-parole period that is longer or shorter than the standard non-parole period and must identify in the record of its reasons each factor that it took into account.	21 22 23
	(4) When determining an aggregate sentence of imprisonment for one or more offences, the court is to indicate, for those offences to which a standard non-parole period applies, the non-parole period that it would have set for each such offence to which the aggregate sentence relates had it set a separate sentence of imprisonment for that offence.	24 25 26 27 28
	(5) If the court indicates under subsection (4) that it would have set a non-parole period for an offence that is longer or shorter than the standard non-parole period for the offence, the court must make a record of the reasons why it would have done so and must identify in the record of its reasons each factor that it took into account.	29 30 31 32 33
	(6) A requirement under this section for a court to make a record of reasons for setting a non-parole period that is longer or shorter than a standard non-parole period does not require the court to identify the extent to which the seriousness of the offence for which the non-parole period is set differs from that of an offence to which the standard non-parole period is referable.	34 35 36 37 38
	(7) The failure of a court to comply with this section does not invalidate the sentence.	39 40

<b>[4] Schedule 2 Savings, transitional and other provisions</b>	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
<b>Part Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013</b>	3
	4
	5
<b>Operation of amendments</b>	6
An amendment made by the <i>Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013</i> extends to an offence committed before the commencement of the amendment but does not affect any sentence imposed before the commencement of the amendment.	7
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